

BEFORE THE ARBITRATION COMMITTEE

MICHAEL J. KNAPIK, et al., : Case No. 69-722
Claimants, :
v. :
PENN CENTRAL, :
Carrier. :

ROBERT WATJEN, et al., : Case No. 69-675
Claimants, :
v. :
PENN CENTRAL, :
Carrier. :

DAVID C. BUNDY, et al., : Case No. 69-947
Claimants, :
v. :
PENN CENTRAL, :
Carrier. :

G.V. SOPHNER, et al., : Case No. 74-914
Claimants, :
v. :
PENN CENTRAL, :
Carrier. :

CLAIMANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came for hearing before the arbitration panel on December 10, 2007. Based upon the evidence adduced at the litigation of this matter and the briefing by the parties, Claimants propose the following findings of fact and conclusions of law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW RELEVANT TO ALL CLAIMANTS.

Parties.

1. The Claimants are thirty-two former employees of the New York Central Railroad (the "Central") and its subsidiary, the Cleveland Union Terminals ("CUT").

2. The Claimants in the Knapik/Brakemen Group are: Jack Acree, Edward Benko, Ken Day, Harvey Doran, Joseph Gastony, George Gentile, George Norris, Christ Steimle, Clarence Tomczak, and Frank Uher.

3. The Claimants in the Sophner/Carmen Group are: William Bilinsky, Joseph Crtalic, Paul Foecking, John F. Gallagher, Gus Janke, Joseph Jarabeck, E.W. Kochenderfer, Patrick McLaughlin, Robert McNeeley, Andrew Novotny, Martin Opalk, L.S. Pentz, Robert Schreiner, Paul Scuba, George Sophner, and Peter Sowinski.

4. The Claimants in the Watjen/Bundy/Clerks Group are: Phillip Franz, Thomas O'Neil, Robert Watjen, Ana Mae Wilger, David Bundy, and James Feldscher.

5. The Knapik/Brakemen and Sophner/Carmen Claimants worked for Central's subsidiary, the CUT, at various times from 1944 to 1978. Claimants' Trial Exs. 8 and 46; Penn Central Trial Exs. 18-27.

6. Claimants are all considered "present employees" for purposes of the MPA. Cioffi, Tr. 619-620.

7. The Defendant is Penn Central, a former railway carrier created by the merger of the Pennsylvania Railway (“Pennsylvania”) and the Central on February 1, 1968. Claimants’ Trial Ex. 1.

8. Penn Central was reorganized in 1978 and is now known as American Premier Underwriters.

Existence of a Contract.

9. To prove the existence of a contract, a party “must show the elements of mutual assent (generally, offer and acceptance) and consideration.” *CSX Transp., Inc. v. Occidental Chemical Corp.*, 65 Fed.Appx. 963, 966 2003 WL 21221986 (6th Cir. 2003) citing *Nilavar v. Osborn*, 127 Ohio App.3d 1, 711 N.E.2d 726, 732 (1998).

10. “Damages for a breach of contract are those which are the natural or probable consequence of the breach of contract or damages resulting from the breach that were within the contemplation of both parties at the time of the making of the contract.” *The Toledo Group, Inc. v. Benton Indus., Inc.*, 87 Ohio App.3d 798, 623 N.E.2d 205, 211 (1993).

11. The measure of damages for breach of contract is “designed to secure for [the injured party] the benefit of the bargain that [it] made by awarding a sum of money that will place [it] in as good a position as [it] would have occupied had the contract[s] been performed.” 24 *Williston on Contracts* §64:2 (4th ed. 2002).

The Merger Protection Agreement (“MPA”).

12. Claimants allege that they are entitled to damages caused by Penn Central’s breach of the MPA.

13. The Pennsylvania, the Central, and their labor unions signed the MPA effective January 1, 1964. Claimants’ Trial Exhibit 1.

14. The MPA is a contract because it demonstrates the elements of offer, acceptance and consideration.

15. The MPA has five separately-numbered sections: §1 defines the guarantees for present employees; §2 allows the parties to re-open negotiations to extend these guarantees if the ICC requires Penn Central to acquire other railroads as a condition of the merger; §3 recites the authority of the labor unions to negotiate; §4 limits the guarantees to employees represented by the signatory labor unions; and §5 states the effective date as January 1, 1964. *Id.*

16. MPA §1 contains two separate and distinct benefit clauses: Subsection 1(a) of the MPA incorporates the Washington Job Protection Agreement (“WJPA”) and extends its benefits to “all employees.” Subsection 1(b) creates new benefits which are “in addition” to the WJPA benefits and extends such benefits to “present employes.[sic]” *Id.*

17. Subsections 1 (c) – (e) require Penn Central to maintain its work force, assume executory contracts, and refer disputes to arbitration. *Id.*

18. The MPA also allows “present employees” to bring claims under MPA §1(b). *Id.*

19. The last sentence of Subsection 1(a) and the relevant portion of Subsection 1(b) state:

provided, however, that in addition to benefits set forth in the said Washington Job Protection Agreement, it is further agreed as follows:

1(b) . . . none of the present employes [sic] of either of these said carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment. *Id.*

The MPA expands the WJPA’s protections without limitation or reference to the language “caused by the merger” or “affected by the merger.” *Id.*

20. Subsection 1(b) says that “none of the present employees . . . shall be placed in a worse position.” *Id.*

21. The MPA states that Subsection 1(b) is “in addition” to the “benefits” under the WJPA. *Id.*

22. Subsection 1(b) differs from the WJPA in at least two respects. First, there is no limitation on the number of years of benefits. Subsection 1(b) applies “at any time during such employment.” *Id.* In contrast, §6(a) of the WJPA limits benefits to five years. *Id.* Second, the MPA, as approved by the ICC, eliminated the WJPA’s causation element.

23. The ICC, in approving the merger, ratified the lack of causal relationship necessary to invoke the protective conditions when it stated:

It must be recognized that applicants [the Railroad] have agreed to certain benefits greater than we have heretofore required of any section 5 applicant, e.g., the job-retention (attrition) and the limitations against reduction in force, which embrace protection from adverse effects not causally connected with the merger.

Pennsylvania Railroad Company – Merger – New York Central Railroad Company, 327 ICC 475, 545 (1966).

24. The ICC’s order is part of the law of the case.

25. The ICC’s order interprets the MPA and is conclusive as to the meaning of the labor protections required by the government before any merger could occur. *Id.*

26. The language of Subsection 1(b) provides that claims are not limited to “adversely affected” employees, but extends to “present employees.”

27. In order to be covered by Subsection 1(b), a Claimant must only show that he was a “present employee,” not that he was adversely affected.

28. To prevail on a claim under the MPA §1(b), a Claimant must prove: 1) he was a “present employee”; and 2) that he was “placed in a worse position with respect to compensation;” and 3) the amount of his damages.

Appendix E Governs The Claims Brought By The Brakemen, Carmen And Clerks In This Matter.

29. Appendix E to the MPA defines “whether” an employee has been “placed in a worse position.” Appx. E.

30. Appendix E deletes the WJPA’s phrase “as a result of such coordination.” *Id.*

31. Appendix E defines the “base period” as the twelve months prior to May, 1964, as adjusted for general wage increases. *Id.*

32. Appendix E states that for “purposes of determining whether, or to what extent, such an employe [sic] has been placed in a worse position with respect to his compensation, his total compensation, and total time paid for during the base period will be separately divided by twelve.” *Id.*

33. Appendix E creates a monthly guarantee amount by accounting for both time worked and wages paid. *Id.*

34. Appendix E provides that the employee “shall be paid the difference less any compensation for voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period.” *Id.*

35. The effect of a voluntary refusal to work is to reduce the amount of the guarantee to the extent that these voluntary absences are greater than his average time paid. *Id.*

36. Appendix E creates an offset only for high levels of voluntary absence. *Id.*

37. The MPA’s offset is limited and is subtracted from the guarantee, as shown by Penn Central’s application of Appendix E. Claimants’ Trial Exs. 57-60.

38. The effect of a voluntary absence is that it reduces, but does not eliminate, the guarantee in any particular month. *Id.*

39. The last paragraph of Appendix E states that “Employees not entitled to preservation of employment but entitled to the benefits of the Washington Job Protection Agreement pursuant to Section 1(a) of the Protective Agreement shall be entitled to compensation computed in accordance with the provisions of said Washington Job Protection Agreement.” Appx. E.

40. Appendix E operates as a “savings clause” which preserves the benefits of the WJPA for anyone who is not otherwise covered by the “additional” benefits in Subsection 1(b), such as members of non-signatory unions or employees who are hired after the merger is consummated.

41. Appendix E cites to Subsection 1(a)’s incorporation of the WJPA, as distinct from Subsection 1(b).

42. Pursuant to Appendix E, if a worker is not protected by the MPA, he is still entitled to any benefits he would otherwise receive under the WJPA.

43. The savings clause of Appendix E clarifies that it is not reducing any benefits that are otherwise owed under the WJPA.

44. The benefits in Subsection 1(b) and Appendix E are separate from, and in addition to, any benefits under Subsection 1(a)’s incorporation of the WJPA.

45. The MPA recognizes that “present employees” will bring claims under Subsection 1(b), which will be measured by the terms of Appendix E.

46. Claims under Subsection 1(b) are linked to Appendix E by requiring that: “[t]he Carrier will furnish upon, request, information specified in Appendix E to this Agreement.” MPA §1(b).

47. Penn Central was required to keep and produce all necessary records. *Id.*

48. George Ellert testified that Appendix E applied to the Claimants’ calculation of benefits. Claimants’ Trial Ex. 34, Testimony of Ellert 182. Further, Paragraph 7 of the 1969 Agreement states that Appendix E applies to compute earnings guarantees of the employees of the CUT. Claimants’ Trial Ex. 19.

Penn Central’s Course of Performance and Administration of MPA Benefits Through The Use Of Standardized MPA Benefit Forms Is Proof Of The MPA’s Meaning.

49. The parties’ course of performance may be used to interpret the meaning of a contract. *St. Marys v. Auglaize Cty. Bd. of Commrs*, 115 Ohio St.3d 387, 875 N.E.2d 561, 2007 - Ohio- 5026 (citing *Natl. City Bank of Cleveland v. Citizens Bldg. Co. of Cleveland*, 48 Ohio Law Abs. 325, 335, 74 N.E.2d 273)(1947)(“Where a dispute arises relating to an agreement under which the parties have been operating for some considerable period of time, the conduct of the parties may be examined in order to determine the construction which they themselves have placed upon the contract.”); *Pavlik v. Consolidation Coal Co.*, 456 F.2d 378, 381 (6th Cir. 1972)(courts look to the post-formation conduct of the parties, their course of performance, in order to discover the meaning of the contract).

50. In administering the MPA, Penn Central used a system of standardized one-page claim forms to be completed by the employee. i.e. Claimants’ Trial Exs. 57-60.

51. When there were disputes regarding the numbers claimed by the employee, Penn Central specified the reason for the reduction and then produced the records needed to resolve the issue one way or the other. *Id.*

52. Penn Central's standardized forms required the claimant to provide his name and identifying information (Part A); his base period guarantee (Part B1); total earnings for the month (Part B2), then subtract these figures to determine the adjustment claimed (Part B3); then the claimant signed and certified that the information was correct. (Part B). *Id.*

53. Any adjustments were made by Penn Central in Part C where Penn Central produced information specifying any better-paying jobs which were available and the days of such availability. *Id.* at Part C(1)(c).

54. In Part D, on the reverse of the form, Penn Central wrote "This Side Of Form For Carrier Use Only" and provided the place for the carrier to specify any higher paying jobs. *Id.* at Part D.

55. Penn Central prohibited the Claimants from providing any other data, including data regarding the availability of other jobs. *Id.*

56. The evidence demonstrated that MPA benefits were paid out by Penn Central for at least seven years after the merger even for a few hours of isolated time. *Id.*

57. These workers were not required to prove a causal link to an event in 1968. *Id.*

58. Benefits were paid during months in which no work was performed. *Id.*

59. In these cases, any voluntary absences were used as an offset, not as a forfeiture, to payment. *Id.*

60. Penn Central's course of performance is consistent with Subsection 1(b) and Appendix E.

61. Penn Central's course of performance is not consistent with the WJPA's requirement of causal proof, its limitation of benefits to months in which some work was performed, or a "rolling" base period of earnings. *Id.*

62. Penn Central paid out \$116.3 million in MPA benefits to workers from 1968 to 1972. *In the Matter of Valuation Proceedings Under Sections 303(c) and 306 of Regional Rail*, 531 F.Supp. 1191, fn. 176 (Sp. Ct. RRA 1981).

63. Penn Central's payments during periods of significant business decline are also inconsistent with a requirement that Claimants causally link their injuries to the merger itself. *Id.*

Subsection 1(B) Creates An Affirmative Obligation By Penn Central To Provide The Information Required By Appendix E.

64. Claims under Subsection 1(b) are linked to Appendix E by requiring that: "[t]he Carrier will furnish upon, request, information specified in Appendix E to this Agreement." MPA §1(b).

65. Subsection 1(b) recognizes that "present employees" will bring claims under Subsection 1(b), which will be measured by the terms of Appendix E.

66. Subsection 1(b)'s incorporation of Appendix E provides additional support for the Panel's conclusion that Appendix E governs claims in this case. The MPA required Penn Central to keep and produce all necessary records.

Penn Central Breached Its Obligation To Produce Documents Required By The MPA.

67. Subsection 1(b) of the MPA requires Penn Central to produce employment records "upon request."

68. Penn Central has failed to produce for any of the individual Claimants "information respecting his current rate of pay, compensation paid and hours worked during a base period comprised of the last twelve (12) months in which he performed compensated service immediately preceding May 16, 1964." Appendix E.

69. At the time this litigation was filed, Penn Central maintained the Claimants' employment records and retained the ability to provide the Appendix E information in order to compute the wage guarantees. Claimants' Trial Exs. 29, 56.

70. Penn Central also had numerous records relating to employment in its possession. Penn Central Trial Exhibits 18 – 27; 57-60.

71. Penn Central's failure to produce these records, as requested, constitutes a breach of Subsection 1(b).

72. Claimants have been damaged by this breach.

73. Claimants were required to hire an expert to recreate the information which Penn Central was required to produce.

74. The costs of Dr. Rosen should be paid by Penn Central as damages for breach of contract, and not as costs.

75. Because of Penn Central's breach, it is not permitted to contest Dr. Rosen's findings.

Interest

76. Prejudgment interest is "an element of complete compensation." *West Virginia v. United States*, 479 U.S. 305, 310 (1987).

77. "Prejudgment interest, like all monetary interest, is simply compensation for the use or forbearance of money owed." *Transmatic, Inc. v. Gulton Industries, Inc.*, 180 F.3d 1343, 1347 (Fed.Cir.1999).

78. Arbitration panels have also held that prejudgment interest is awarded to employees in order to make them whole. *Laidlaw Transit Co.*, 109 LA 647 (1997).

79. The proper rate of interest is the prime rate. *Natoli v. Carriage House Motor Inn. Inc.*, 1988 Westlaw 53397 (N.D. N.Y. 1988) (applying prime rate).

80. Dr. Rosen testified that prime rate is the appropriate interest rate in this matter and the he applied the prime rate as set forth in Claimants' Trial Ex. 9; Rosen Report for each claimant at page 7; Claimants' Trial Exs. 42 and 45, pp. 3-6.

Waiver Of Affirmative Defenses

81. Federal Rule of Civil Procedure 8(c) states in pertinent part:

a party **shall** set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, **discharge in bankruptcy**, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, **payment**, release, res judicata, statute of frauds, statute of limitations, waiver, and **any other matter constituting an avoidance or affirmative defense**. (Emphasis added.)

82. Penn Central filed answers in the Knapik Case in 1969 and the Sophner Case in 1975 respectively. Claimants Trial Ex. 28.

83. Penn Central's Answers do not raise any of the affirmative defenses set forth in the cited Civil Rule.

84. Penn Central has never sought to amend those answers.

85. Affirmative defenses are waived if not timely asserted. *Edely v. Water and Power Auth.*, 756 F.3d 204 (2001).

86. Penn Central failed to allege any matter constituting an avoidance or affirmative defense. Pursuant to Fed. R. Civ. P. 8(c), Penn Central has waived any matter constituting an avoidance or affirmative defense.

87. Specifically, Penn Central failed to allege or produce evidence establishing that these Claimants' claims were discharged in bankruptcy. Therefore, Penn Central waived the affirmative defense of discharge in bankruptcy.

88. Penn Central failed to allege or produce evidence establishing that it had paid these Claimants under the MPA. Therefore, Penn Central waived the affirmative defense of payment.

Spoliation Of Evidence

89. Parties are “under a duty to preserve evidence which it knows or reasonably should know is relevant to the action.” *See Cincinnati Ins. Co. v. Gen. Motors Corp., supra*, citing *Hirsch v. Gen. Motors Corp.*, 266 N.J.Super. 222, 628 A.2d 1108, 1130 (1993).

90. Intent is not necessary because “negligent or inadvertent destruction of evidence is sufficient to trigger sanctions where the opposing party is disadvantaged by the loss.” *Simeone v. Girard City Bd. of Edn.*, 171 Ohio App.3d 633, 872 N.E.2d 344, 222 Ed. Law Rep. 362, 2007 -Ohio- 1775 (Ohio App. 11 Dist., 2007).

91. A tribunal has the power to fashion a just remedy to cure the impact of the spoliation. *American States Ins. Co. v. Tokai-Seiki (H.K.), Ltd.* (1997), 94 Ohio Misc.2d 172, 175, 704 N.E.2d 1280. *Id.* at 176, 704 N.E.2d 1280, citing *Farley Metals, Inc. v. Barber Colman Co.* (1994), 269 Ill.App.3d 104, 206 Ill.Dec. 712, 645 N.E.2d 964, 968.

92. Penn Central was required to maintain all records once it knew, or should have known, that they might be relevant to litigation.

93. The MPA required Penn Central to maintain and produce upon request all records relevant to Claimants’ guarantees. MPA §1(b).

94. George Ellert, Assistant Director of Labor Relations for the carrier testified that Penn Central, not the employee, was responsible for maintaining the personnel records and the wage guarantee data. Claimants’ Trial Ex. 34 Testimony of Ellert pp. 626-628.

95. The testimony of Claimants' witnesses established that this information was never recorded or maintained by the employees. Knapik, Tr. 104, Gallagher, Tr. 173.

96. Penn Central was on notice since the filings of the complaints in 1969 and 1974 respectively, of the nature of Claimants' allegations.

97. Claimants served discovery requests in 1970. Claimants' Trial Ex. 56, Interrogatories 28-30

98. At that time, Penn Central admitted at that time it had possession and would produce personnel records. *Id.*

99. Later, Claimants requested such records on other occasions and in subsequent rounds of litigation.

100. Penn Central knew of the litigation prior to the transfer of personnel records to other railroads during and after the bankruptcy.

101. As the Surface Transportation Board ("STB") determined, the repository of these documents was Penn Central. "Because the carrier was litigating the issue of compensation, it was on notice to keep records of what forms were or were not submitted. Claimants had no duty to administer the compensation scheme and to act as record keeper for that purpose." *Pennsylvania Railroad Company, STB Finance Docket No. 21989*, fn. 4 (December 2, 1998)("STB Decision"); Claimants' Trial Ex. 8 at 7.

102. Penn Central had a duty to maintain copies of this personnel information just as any other Defendant.

103. This Tribunal must remediate the prejudicial effect caused by the loss of evidence under Civil Rule 36.

104. Sanctions for the spoliation of evidence are essential as a matter of public policy. *Iuoknas v. Roto Rooter* 167 Ohio App. 559 (2006).

105. The appropriate remedy is to preclude arguments or evidence by Penn Central regarding any issue for which it possessed records that it subsequently failed to preserve.

106. The issues which Penn Central is prohibited from contesting include Claimants' base period wages, Claimants' actual wages, Claimants' fringe benefits, Claimants' work histories, including the location or mark up dates of Claimants which would have been in their now non-existent personnel files, and which were required to have been retained by Penn Central.

107. It is also appropriate to require Penn Central to pay for the costs incurred by Claimants for Dr. Rosen in order to recreate the evidence spoliated by Penn Central and to accept Dr. Rosen's testimony as true.

II. FINDINGS OF FACT SPECIFIC TO THE KNAPIK/BRAKEMEN CLAIMANTS.

Facts Specific To The Knapik/Brakemen

108. The Brakemen were furloughed *en masse* on February 26, 1968. Claimants' Trial Ex. 15.

109. At the time they were furloughed, Penn Central informed the Brakemen/Knapik Claimants that they "may" stand for work at Central's freight yards. Claimants' Trial Ex. 15.

110. "Standing for work" meant reporting to the facility and then waiting until the railroad called to inform the employee of a job. Knapik Tr. 101, 140, McNabb Tr. 282, and Verdi Tr. 358.

111. Employees were not required to physically show up at the job site. Knapik Testimony, Tr. 102.

112. The records produced by Penn Central show that Penn Central itself considered the Claimants to be on furlough until they were recalled. Claimants' Trial Exs. 46, 51

113. Because the Claimants were placed at the bottom of the seniority roster with new, September 10, 1964 seniority, they could mark-up for work but could not actually obtain work because jobs were not available. Claimants' Trial Ex. 34, Testimony of Beedlow pp. 250 – 258.

114. Being placed on the bottom of the freight yard roster meant, for example, that Claimant Steimle lost more than 400 places of seniority on the consolidated roster. Claimants' Trial Ex. 16, compare pp. 2 - 5.

115. When the Claimants marked up, they marked up for sporadic and often non-existent jobs. Claimants' Trial Ex. 34, Testimony of Steimle pp. 467 – 469, Testimony of Beedlow pp. 258, 269.

116. In May 1969, for the first time in fifteen months, some of the *Knapik* Claimants were called back to work. Claimants' Trial Ex. 17.

117. All of the remaining *Knapik* Claimants responded to the recall and/or signed a letter saying that they were reporting to work under protest, and then reported for work. Claimants' Trial Ex. 18.

118. Additional proof that the *Knapik* Claimants were available for work is found in their time cards and RRB records, all of which show that they returned to work. Claimants' Trial Ex. 8; Penn Central Trial Exs. 18-27.

119. Penn Central's own handwritten personnel records document that each of these claimants "accepted recall" or "returned to work". Penn Central's Trial Exs. 18-27.

120. The way an employee knew about availability of work subsequent to the furlough was by receiving a phone call from the railroad dispatcher. Claimants' Trial Ex. 34, Testimony of Steimle 467, Knapik Tr. 101, 105, McNabb Tr. 282, Verdi Tr. 358.

121. Failure by an employee to accept an available position resulted in disciplinary action and ultimately termination by the Railroad. Claimants' Trial Ex. 34, Testimony of Beedlow 254, Testimony of Steimle 463; Knapik Tr. 101, Gallagher Tr. 201.

122. There is no evidence that the Knapik Claimants were subjected to disciplinary proceedings, and their names remained on the roster on furlough and available for recall. Claimants' Trial Exs. 16 and 51.

123. The lack of any disciplinary evidence establishes that the Knapik Claimants did not voluntarily refuse available work.

Knapik/Brakemen's Prima Facie Case.

124. Pursuant to Subsection 1(b), of the MPA the Brakemen/Knapik Claimants are entitled to guarantees under the MPA if they were "present employees" who received less in any month than during the equivalent month during the 1963-1964 base period, after adjusting for general wage increases. Claimants' Trial Ex. 1, §(1)(b) & Appx. E.

125. In order to determine the base period amounts, the MPA, Subsection 1(b), requires Penn Central to produce, upon request, information required to calculate the guarantee amount under Appendix E.

126. Penn Central produced guarantee figures for the Brakemen/Knapik Claimants. Penn Central Trial Ex. Nos. 18-27.

127. At the bottom left of each exhibit is the notation: "Guarantee" followed by the amount for the particular Claimant. *Id.*

128. Penn Central, through its partisan arbitrator Mr. O'Neill, also produced guarantee figures in the 1990 arbitration of this case. ("O'Neill Letter"); Claimants' Trial Ex. 29.

129. A comparison of the guarantee figures contained in Penn Central's Trial Exhibits and the figures produced previously in 1990 is as follows:

Penn Central Personnel Documents Are Identical to Guarantees in O'Neill Letter

Name of Plaintiff	Monthly Guarantee Per Penn Central's Trial Ex.	Trial Ex. No.	Monthly Guarantee Per O'Neill Letter Claimants' Trial Exhibit No. 29
Acree	\$717.30	18	\$717.30
Benko	\$758.56	19	\$758.56
Day	\$780.75	20	\$780.75
Doran	\$381.89	21	\$381.89
Gastony	\$604.10	22	\$604.10
Gentile	\$377.17	23	\$377.17
Norris	\$742.70	24	\$742.70
Steimle	\$280.22	25	\$280.22
Tomczak	\$835.74	26	\$835.74
Uher	\$703.03	27	\$703.03

130. The guarantee numbers as set forth in the O'Neill letter are the same as those confirmed by Penn Central's Trial Exhibits 18-27.

131. The guarantee amounts are based upon the 1963-1964 base period and are consistent with Appendix E. Claimants' Trial Ex. 29, Penn Central Trial Exs. 18-27.

132. The base guarantee amounts that have been submitted twice by Penn Central are correct and Penn Central correctly determined that Appendix E governs these claims.

133. Appendix E states that these guarantees shall be adjusted to reflect any general wage increases. MPA, Appx. E.

134. Dr. Rosen used wage rates reported by the brakemen's union and shown in "Daily Rate of Pay for Yard Brakemen and Switch Tenders" in order to determine the appropriate general wage increase. Claimants' Trial Exs.8, p.9, 44.

135. Dr. Rosen determined the amount of money actually paid to Claimants during the relevant period by using the annual data reported by the RRB. *Id.* Rosen Report (for each claimant) at page 4. Claimants' Trial Exs. 8, 9.

136. After determining each individual's base period guarantee amount, adjusting for general wage increases, and determining their actual wages, Dr. Rosen then measured the loss of income, if any, by comparing the guarantee figures with their actual income as established by the RRB. *Id.* Claimants' Trial Exs. 8, 9.

137. Dr. Rosen used Appendix E to determine the injuries suffered by the Brakemen and the Carmen.

138. Dr. Rosen then calculated the pension benefit based upon the required percentage of employer contribution for each year. Claimants' Trial Ex. 9, Rosen Tr. 402, 403.

139. Dr. Rosen also applied the prime rate to determine the amount of prejudgment interest.

140. Finally, the Brakemen were injured by Penn Central's breach of its obligations to produce relevant documents in this case.

141. The Brakemen are entitled to an award of damages in the amount of their fractional share of the expenses incurred for Dr. Rosen to recreate the information which Penn Central was required to produce.

142. Based upon the evidence produced at trial, the Brakemen/Knapik Claimants are entitled to the damages as individually set forth in Appendix A and attached here to.

Claimants' Estimated Damages Represent The Lower Bounds Of Damages Owed By Penn Central.

143. Dr. Rosen did not include damages for any years in which Claimants' earned more than the maximum amount required to be reported to the RRB. Rosen Tr. 399, 400, 424.

144. In these years, there could have been damages, but Dr. Rosen declined to estimate such damages. *Id.*

145. Dr. Rosen used annual data, not monthly data. *Id.* at 404.

146. The use of annual data reduced Penn Central's damages, in some case by as much as 67%. *Id.* at 406-408, 483; Compare Christ Steimle's damages.

147. Although Claimants are entitled to damages for all fringe benefits including health care, free transportation, and other benefits, Dr. Rosen only calculated the impact on pension benefits. *Id.* at 402. All other benefits were excluded. *Id.* at 408.

148. Dr. Rosen's approach works in favor of Penn Central in every instance.

149. Penn Central's own documents show that the "Amount Owed" to the Knapik Claimants exceeds the estimates of Dr. Rosen. Exhibit A to Claimants' Post Arbitration Brief.

Defenses Specific To The Knapik/Brakemen

150. Penn Central contends that the Brakemen are barred from recovery because, it claims, the MPA required that they report for work at the freight yard. Penn Central states that the Claimants must produce evidence that they did so. In support of its claim, Penn Central relies upon the case of *Augustus. et al. v. STB, et al.*, 2000 U.S. App. Lexis 33966 (6th Cir. 2000).

151. Penn Central's argument is an affirmative defense or avoidance which was waived because it was not raised in its first responsive pleading. Fed. R. Civ. P. 8.

152. On its merits, Penn Central's affirmative defense is not well taken. The STB, in distinguishing between the workers who did report for work and those who did not, held that "the 10 former CUT employees who reported to the freight yard were Messrs. Acree, Benko, Day, Doran, Gastony, Gentile, Norris, Steimle, Tomczak and Uher." STB, Claimants Trial Ex. 7 at fn. 4.

153. Penn Central's reliance upon *Augustus* is misplaced.

154. The *Augustus* Court held, "section 1(b) of the MPA expressly required covered employees to accept available work in order to qualify for benefits." *Id.* at 4.

155. The evidence at trial established that the Brakemen reported for work at the freight yard, that work was not available for the Brakemen until after the 1969 recalls, and that all Brakemen did in fact return to work in accordance with these recalls. Claimants' Trial Ex. , Testimony of Steimle pp. 467-69; Testimony of Beedlow pp. 250-258, 269, 401.

156. Under the STB and the Sixth Circuit decisions, Penn Central can only offset its damages if it can show that Claimants turned down available work.

157. MPA Subsection 1(b) and Appendix E required Penn Central to maintain and provide such records of available work. Penn Central was required to show that there were available jobs.

158. The STB has already determined – as the law of this case – that Penn Central was required to maintain the records to administer the MPA system. STB Decision, Claimants' Trial Ex. 7 at 7.

159. As the STB noted "[b]ecause the carrier was litigating the issue of compensation, it was on notice to keep records of what forms were, or were not, submitted. Claimants had no duty to administer the compensation scheme and to act as record keepers for that purpose." *Id.*

160. The point of Subsection 1(b)'s record-keeping requirement was to make Penn Central the repository of information needed to calculate guarantees so that such guarantees can be easily determined.

161. By reference to Appendix E, the MPA sets forth the formula to be used in calculating the value of the guarantees. Appendix E states: "[i]f his compensation in his current position is less in any month . . . than his average base period compensation . . . he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service" Claimants' Trial Ex. 1, Appx. E.

162. Appendix E recognizes that unavailability for work is not a basis to deny payment of the guarantees required by the MPA, but may be considered as a possible reduction in such guarantees.

163. In contrast to the course of performance established through Penn Central's standardized MPA claim forms, Penn Central produced no evidence proving which days or for which jobs it contends that the Brakemen were eligible but voluntarily absent.

164. The defense of availability operates as an offset, not as a complete defense. Even if this Panel were to consider Penn Central's waived affirmative defense, Penn Central produced no evidence as to the amount of the offset which should be attributed to each Brakemen. Thus, this Panel has no evidence as to the amount, if any, by which it should reduce any particular Claimant's damages.

165. Ultimately, because the evidence establishes that there was no work available for the Claimants during the relevant time period, no offset is appropriate.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW SPECIFIC TO THE SOPHNER/CARMEN CLAIMANTS.

The Sophner/Carmen's Prima Facie Case

166. The Sophner Claimants were Carmen who worked at both the CUT and the Central's locations prior to the merger. Gallagher Tr. 166-169.

167. After adjusting for general wage increases, the Sophner Claimants earned less after 1968 than they did during the 1963-1964 base period. Claimants' Trial Ex. 8; Rosen Reports, Claimants' Trial Ex. 9; Gallagher Tr. 175, 179.

168. Dr. Rosen calculated each Sophner Claimant's base period wages and guarantee amounts. Claimants' Trial Ex. 9, p. 4 (for each Claimant).

169. Dr. Rosen used the records of the RRB to reach his conclusions regarding each Claimant's base period wages. Rosen Tr. 413-414.

170. For each subsequent year, Dr. Rosen adjusted the guarantee amount to reflect general wage increases for the Carmen. *Id.* at 9-12 (for each claimant). *See also* Claimants' Trial Ex. p. 42, 1-4.

171. Dr. Rosen compared the guarantee amounts to the actual wages as reported in the official records of the RRB. Rosen Tr. 421-422.

172. In each year where there was a difference, Dr. Rosen determined the amount of the damages. *Id.* at 423.

173. Dr. Rosen then added these annual damage amounts to determine total lost wages. *Id.*

174. Based upon this methodology, Dr. Rosen calculated amounts for each individual Sophner Claimant.

175. Dr. Rosen then calculated the pension benefit based upon the required percentage of employer contribution for each year. Claimants' Trial Ex. 9, Rosen Tr. 402, 403.

176. Dr. Rosen also applied the prime rate to determine the amount of prejudgment interest.

177. Finally, the Carmen were injured by Penn Central's breach of its obligations to produce relevant documents in this case.

178. The Carmen are entitled as damages to their fractional share of the expenses incurred for Dr. Rosen to recreate the information which Penn Central was required to produce.

179. Based upon the evidence produced at trial, the Carmen/Sophner Claimants are entitled to the damages as individually set forth in Appendix B and attached here to.

Penn Central's Affirmative Defenses Are Without Merit.

180. Penn Central argues that the Sophner Claimants were required to prove that they were available for work, that they exercised their seniority on a daily basis and that their injuries were proximately caused by the merger.

181. Penn Central's affirmative defenses are not well taken.

182. Penn Central failed to preserve these affirmative defenses, failed to produce documents as required by the MPA, and failed to produce evidence of other available jobs as required by its course of performance.

183. With regard to availability for work, the RRB records show that every *Sophner* Claimant worked continuously in every year following the merger, except in their year of retirement or death. Claimants' Trial Ex. 8.

184. The *Sophner* Claimants all continued to work, but were damaged because they were not able to work enough to earn their guarantee amounts. Claimants' Trial Exs. 8, 9; Gallagher Tr. 170-179.

185. With regard to the exercise of their seniority, Penn Central failed to present documents required by the MPA and failed to produce any evidence of the *Sophner* Claimants' exercise of seniority.

186. Penn Central also argues that the *Sophner* Claimants must prove that their injuries were proximately caused by the merger.

187. Penn Central's causation argument is without merit because the MPA eliminated the causation requirement and because causation was never required by Penn Central's course of performance as evidenced by its standardized forms for MPA benefits.

IV. **FINDINGS OF FACT AND CONCLUSIONS OF LAW SPECIFIC TO THE WATJEN/BUNDY CLERK CLAIMANTS**

The Watjen/Bundy Clerk Claimants' Prima Facie Case

188. The Watjen/Bundy Claimants were all accountants and clerks. Franz Tr. 215. Claimants Franz, Feldscher and Watjen all worked in Cleveland. *Id.* at 218.

189. Franz worked as a rate clerk for approximately fourteen years auditing freight bills, issuing refunds, examining and calculating freight charges and quoting rates of products. Franz Tr. 215.

190. All of the clerks were on the Detroit seniority roster. Franz Tr. 236.

191. The result of that agreement was to place rate clerks on the Detroit seniority roster regardless of their place of employment. Franz Tr. 225, 226.

192. Robert Watjen was the chief rate clerk in Cleveland with over twenty years of service at the time of the merger. Claimants' Trial Ex. 9.

193. Feldscher was the third man in the Cleveland office. Franz Tr. 218. He had started work at the New York Central in 1953. Claimants' Trial Ex. 9.

194. Claimant Ana Mac Wilger was a 58-year-old widow when her job was abolished. Claimants' Trial Ex. 20.

195. Claimant O'Neil worked in upstate, New York. He was also on the Detroit seniority roster. Franz Tr. 230.

196. David Bundy worked as lead clerk in Albany, New York. Franz Tr. 231.

197. He was informed that his job was being abolished on February 7, 1968 as Penn Central was converting the former Albany central billing to the office of controllers in New York, New York. Claimants' Trial Ex. 22.

198. On January 10, 1969 Penn Central informed Franz, Feldscher and Watjen that their jobs were being abolished because the coordinated entity was consolidating their "clerk" positions in Chicago. Claimants' Trial Ex. 20; Franz Tr. 218, 219.

199. Shortly after, Bundy, Wilger and O'Neil received similar letters indicating that their jobs were being consolidated in Chicago, Detroit and Indianapolis. *Id.*

200. This transfer was part of the regional reorganization of the new Penn Central system.

201. The clerks had no seniority to exercise in any city other than Detroit. Franz Tr. 220, 221, 225.

202. The Watjen/Bundy Claimants, quoting the WJPA and MPA, wrote to the Detroit Manager of Freight Accounting, E. T. Scheper "to advise you of my intent of obtaining a position available to me by the exercise of my seniority." Claimants' Trial Exhibit 21; Franz Tr. 220.

203. Mr. E.T. Scheper traveled to Cleveland to meet with the Claimants Franz, Watjen and Feldscher in person. Franz Tr. 219.

204. Scheper informed the Clerks that that they would not be allowed to exercise seniority in Detroit. Franz Tr. 220-221.

205. None of the Severance Claimants were allowed to exercise their Detroit seniority. Franz Tr. 236, l 10-25.

206. Penn Central reduced their seniority to zero and treated them as new employees. Franz Tr. 227.

207. The Clerks exercised their rights to resign and to receive severance payments.

208. The Watjen/Bundy Claimants wrote to Mr. Scheper and informed him of their decisions to take their severance allowance. For example, Franz wrote, "I choose to take my separation allowance in accordance with the terms of the Merger Agreement." Claimants' Trial Ex. 22; Franz Tr. 221, 221.

209. Thomas O'Neil wrote, "I am formally requesting the lump sum separation allowance which shall be computed in accordance with the schedule set forth in the Agreement." *Id.*

210. The other Watjen/Bundy Claimants all wrote similar letters within their respective required time frames. *Id.*

211. Under MPA §1(a), employees are entitled to the protections of the WJPA.

212. The Watjen/Bundy Claimants are entitled to damages under both Subsection 1(a)(the WJPA) and Subsection 1(b).

213. Section 9 of the WJPA provides that “any employee eligible to receive a coordination allowance under Section 7 hereof may, at his option, at the time of coordination, resign and (in lieu of all other benefits and protection provided in this agreement) accept a lump sum separation allowance.” MPA Appendix A §9.

214. WJPA §7 states that a coordination allowance is awarded to: “Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination. “ WJPA §7(a).

215. Section 7(c)(1) of the WJPA states in pertinent part:

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

I. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation. . . .

216. Under the WJPA, the employee must show that he lost his position as a “result of said coordination” and that he could not obtain other employment “by the exercise of his seniority rights.”

217. The Clerks lost their positions as accountants when the merged company decided to consolidate all such positions on a regional basis as part of its post-merger reorganization. Claimants’ Trial Ex. 20.

218. The Clerks also lost all of their seniority. Franz Tr. 226-228.

219. The Clerks were treated as though they were new job applicants who had no seniority. Franz Tr. 228, 230.

220. Thereafter, the Claimants could not obtain any positions – either on their home roads or elsewhere – “by the exercise of their seniority” – because they had no seniority to exercise. Franz Tr. 248.

221. Under the WJPA, the Claimants are entitled to lump sum separation payments because their jobs were abolished as the result of the coordination and because they could not exercise their seniority rights to obtain any other position.

222. Under the MPA, the clerks' union signed an implementing agreement which replaced MPA Appendix F. Penn Central's Trial Ex. 101, subsection XI, p. 156.

223. This Implementing Agreement states:

A 'present employe' [sic] requested by the Company to transfer with his work . . . requiring a change of residence . . . shall have the following options provided they are exercised within seven calendar days from date of request:

* * *

2. Resign in lieu of options 1 or 2 effective as of the date the transfer is actually made and receive (in lieu of all other benefits and protections to which he may be entitled under the Merger Protective agreement or any other agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement. .

..

Id., subsection VII(a), p. 154.

224. Claimants' work was transferred to cities that required them to leave their homes. Claimants' Trial Ex. 20. The *Watjen* and *Bundy* Claimants were not permitted to exercise their seniority rights on their home road to obtain "a position in the coordinated operation," in the exercise of their seniority within the seven to ten-day period required in the notice abolishing their jobs.

225. They exercised their option to submit resignations and demand the lump sum separation allowance.

226. The Railroad never responded to those requests. Franz Tr. 223, 232.

227. Weeks later the clerks were demoted and ordered to report to jobs with worse working conditions and lower pay. Franz Tr. 235.

228. All Claimants reported to the work and served as utility clerks. Franz Tr. 223, 224, 230, 231, 234, 235.

229. The seniority they were given in those jobs was with their “new dates of hire,” *i.e.* for Franz it was February 11, 1969, a loss of fourteen years of seniority. Franz Tr. 228.

230. Their paychecks were always less than before the abolishment of their old jobs and their payment were never consistent. Franz Tr. 230, 231.

231. They all attempted to bid on new jobs with hours and duties comparable to their old rate clerk jobs but they were outbid by employees of years less seniority – often with only one or two years of seniority. Franz Tr. 228, 236.

232. Under both Subsection 1(a) and Subsection 1(b), the amount of the separation allowance is calculated pursuant to WJPA §9.

233. Any employee with five years or more of seniority was entitled to twelve months of separation allowance. *Id.*

234. This rate “shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.” *Id.*

235. Based upon this methodology, Dr. Rosen calculated amounts for each individual Clerk. Rosen Tr. 409-412.

236. Dr. Rosen also applied the prime rate to determine the amount of prejudgment interest.

237. Finally, the Clerks were injured by Penn Central’s breach of its obligations to produce relevant documents in this case.

238. The Clerks are entitled as damages to their fractional share of the expenses incurred for Dr. Rosen to recreate the information which Penn Central was required to produce.

239. Based upon the evidence produced at trial, the Clerks/Watjen/Bundy Claimants are entitled to the damages as individually set forth in Appendix C and attached hereto.

V. OTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Attorneys' Fees And Costs

240. Arbitrators may award attorneys' fees to make the Claimants whole. *See Port of Tacoma, Wash*, 99 LA 1151 (Arb. South, 1992)(employer ordered to pay the claimant's attorneys' fees in a sex discrimination case).

241. Arbitrators also have the power to award the costs of arbitration. *Sonic Knitting Industries, Inc.*, 65 LA 453468-69 (1975).

242. Federal law provides that: "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C.A. §1927.

243. Attorneys' fees are necessary to make the Claimants whole and are appropriate in light of Penn Central's repeated delays of these cases.

244. This Panel is unaware of any similar case currently pending which has been delayed as long as this case.

245. Nearly three years ago, Judge Oliver recognized that Penn Central had unreasonably delayed this case and had "unclean hands." Claimants' Trial Ex. 25 Oliver's Order February 12, 2005 at 8.

246. Claimants have incurred reasonable attorneys' fees in the amount of a one-third contingent fee. Claimants' Trial Ex. 54.

247. Claimants' have incurred out-of-pocket costs for experts, court costs, arbitrators' fees, and other expenses which to date total \$136,231.59. Claimants' Trial Ex. 53 as supplemented by additional costs for Dr. Rosen arbitration testimony (\$9,050.00), transcript of arbitration (\$3,850.96) and arbitrator services (\$20,300.00).

248. Pursuant to 28 U.S.C.A. §1927, the Claimants are entitled to attorneys' fees and costs because this case has been unreasonably delayed and this action has been multiplied.

249. Accordingly, Claimants are entitled to attorneys' fees in the amount of one-third of the total damages awarded by this Tribunal.

Punitive Damages

250. Arbitrators may award punitive damages where the contractual violation and the adjudication of the violation were protracted. *See Laidlaw Transit Co.*, 109 LA 647 (1997).

251. Arbitrators may also award punitive damages for bad faith conduct. *See Detroit Bd. of Ed.*, 101 LA 1199 (1993)(where the employer's continued violation of the agreement merited an award for attorney fees).

252. Penn Central's refusal to pay these Claimants, while paying other similarly-situated claimants, has continued for nearly forty years and is "protracted" as defined by the *Laidlaw Transit Case*.

253. Penn Central's spoliation of evidence, refusals to appoint arbitrators, multiplication of proceedings and refusals to produce witnesses are evidence of bad faith conduct as defined by *Detroit Bd. Of Ed.*

254. Under these facts, an award of punitive damages is warranted under both *Laidlaw Transit and Detroit Bd. Of Ed.*

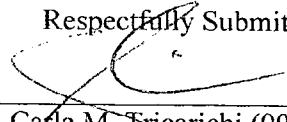
255. Pursuant to *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) this Panel may award punitive damages in an amount up to nine times the actual damages.

256. This Panel declines to award the full amount of damages permitted under *Gore, supra*, and awards instead punitive damages in the amount of two times the total award for each Claimant.

CONCLUSION

257. After more than thirty-five years of litigation, for all of the foregoing reasons, this panel should award each of the Claimants damages caused by Penn Central's breach of the MPA, including actual damages with interest, attorney fees/costs and punitive damages.

Respectfully Submitted,



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on this 18th day of March 2008

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KNAPIK CLAIMANTS

Name	Guarantee	Pension Benefit	Interest at Prime Rate	Total Displacement Allowance Loss	Fractional Share of Rosen as Damages	Litigation Costs	Total Award	Attorneys' Fees	TOTAL
	Trial Ex. 9	Trial Ex. 9	Trial Ex. 45	Trial Ex. 45	Trial Ex. 53	Trial Ex. 53		28 USC 1927 Trial Ex. 54	
Acree	\$9,681	\$875	\$304,254	\$314,810	\$1,644	\$2,613	\$319,067	\$106,356	\$425,423
Benko	\$108,822	\$14,288	\$2,402,898	\$2,526,009	\$1,644	\$2,613	\$2,530,266	\$843,422	\$3,373,688
Day	\$43,468	\$4,799	\$1,120,361	\$1,168,628	\$1,644	\$2,613	\$1,172,885	\$390,962	\$1,563,847
Doran	\$11,158	\$1,052	\$329,486	\$341,696	\$1,644	\$2,613	\$345,953	\$115,318	\$461,271
Gastony	\$15,110	\$1,522	\$397,089	\$413,721	\$1,644	\$2,613	\$417,978	\$139,326	\$557,304
Gentile	\$6,923	\$639	\$211,677	\$219,239	\$1,644	\$2,613	\$223,496	\$74,499	\$297,995
Norris	\$45,200	\$4,957	\$1,173,730	\$1,223,886	\$1,644	\$2,613	\$1,228,143	\$409,381	\$1,637,524
Steimle	\$3,239	\$301	\$97,792	\$101,332	\$1,644	\$2,613	\$105,589	\$35,196	\$140,785
Tomczak	\$47,230	\$5,437	\$1,187,435	\$1,240,102	\$1,644	\$2,613	\$1,244,359	\$414,786	\$1,659,145
Uher	\$21,538	\$2,022	\$634,501	\$658,061	\$1,644	\$2,613	\$662,318	\$220,773	\$883,091

APPENDIX A

SOPHNER CLAIMANTS

Name	Guarantee	Pension Benefit	Interest at Prime Rate	Total Displacement Allowance Loss	Fractional Share of Rosen as Damages	Litigation Costs	Total Award	Attorneys' Fees	TOTAL
	Trial Ex. 9	Trial Ex. 9	Trial Ex. 45	Trial Ex. 45	Trial Ex. 53	Trial Ex. 53		Trial Ex. 54	
Bilinsky	\$2,072	\$221	\$50,568	\$52,861	\$1,644	\$2,613	\$57,118	\$19,039	\$76,157
Crtalic	\$2,675	\$285	\$63,512	\$66,471	\$1,644	\$2,613	\$70,729	\$23,576	\$94,305
Foecking	\$11,959	\$1,808	\$188,099	\$201,866	\$1,644	\$2,613	\$206,123	\$68,708	\$274,831
Gallagher	\$2,787	\$266	\$83,577	\$86,631	\$1,644	\$2,613	\$90,887	\$30,296	\$121,183
Janke	\$3,776	\$370	\$99,291	\$103,437	\$1,644	\$2,613	\$107,684	\$35,895	\$143,579
Jarabeck	\$3,240	\$319	\$36,389	\$39,946	\$1,644	\$2,613	\$44,205	\$14,735	\$58,940
Kochenderfer	\$6,132	\$652	\$149,366	\$156,150	\$1,644	\$2,613	\$160,407	\$53,469	\$213,876
McLaughlin	\$31,032	\$3,401	\$793,640	\$828,073	\$1,644	\$2,613	\$832,330	\$277,443	\$1,109,773
McNeeley	\$4,576	\$570	\$103,097	\$108,243	\$1,644	\$2,613	\$112,500	\$37,500	\$150,000
Novotny	\$1,975	\$220	\$49,101	\$51,295	\$1,644	\$2,613	\$55,552	\$18,507	\$74,069
Opalk	\$8,575	\$894	\$219,601	\$229,070	\$1,644	\$2,613	\$233,327	\$77,776	\$301,103
Pentz	\$4,824	\$573	\$113,758	\$119,155	\$1,644	\$2,613	\$123,412	\$41,137	\$164,549
Schreiner	\$18,830	\$1,985	\$491,953	\$512,768	\$1,644	\$2,613	\$517,025	\$172,342	\$689,367
Scuba	\$11,703	\$1,188	\$293,927	\$306,819	\$1,644	\$2,613	\$310,076	\$103,692	\$413,768
Sophner	\$15,252	\$1,486	\$410,367	\$427,105	\$1,644	\$2,613	\$431,362	\$143,787	\$575,149
Sowinski	\$8,227	\$873	\$199,534	\$208,634	\$1,644	\$2,613	\$212,891	\$70,964	\$283,855

APPENDIX B

WATJEN/BUNDY CLAIMANTS

Name	Separation Allowance Trial Ex. 9	Interest at Prime Rate Trial Ex. 45	Total Separation Allowance Loss Trial Ex. 45	Fractional Share of Rosen as Damages Trial Ex. 53	Litigation Costs Trial Ex. 53	Total Award	Attorneys' Fees 28 USC 1927 Trial Ex. 54	TOTAL
Franz	\$10,473	\$277,278	\$287,750	\$1,644	\$2,613	\$292,008	\$97,336	\$389,344
O'Neil	\$10,406	\$273,662	\$284,068	\$1,644	\$2,613	\$288,325	\$96,108	\$384,433
Watjen	\$10,950	\$287,957	\$298,907	\$1,644	\$2,613	\$303,164	\$101,055	\$404,219
Wilger	\$10,435	\$281,872	\$292,306	\$1,644	\$2,613	\$296,563	\$98,854	\$395,417
Bundy	\$10,793	\$283,823	\$294,615	\$1,644	\$2,613	\$298,872	\$99,624	\$398,496
Feldscher	\$10,759	\$279,089	\$289,849	\$1,644	\$2,613	\$294,106	\$98,038	\$392,141

APPENDIX C